Calendar No. 357

102D CONGRESS *1st Session* | SENATE | REPORT 102-233

WHITE CLAY CREEK STUDY ACT

NOVEMBER 23 (legislative day, NOVEMBER 20), 1991.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1552]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1552) to amend the Wild and Scenic Rivers Act by designating the White Clay Creek in Delaware and Pennsylvania for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

1. On page 3, line 7, strike "(hereinafter" through "Creek)".

2. On page 3, line 12, strike "(11)" and insert in lieu thereof, "(12)".

3. On page 3, line 13, strike "Pennsylvania" and insert in lieu thereof, "Pennsylvania, including its branches and tributaries,".

4. On page 3, strike lines 16 through 25 in their entirety, and insert in lieu thereof the following:

> (B) The study shall include a map of the White Clay Creek watershed in Delaware and Pennsylvania, and shall provide recommendations for the protection and management of White Clay Creek, including the role of State and local governments and affected landowners, if White Clay Creek is designated as a component of the Wild and Scenic Rivers System.

5. On page 4, lines 1 and 2, strike "study" through "plan," and insert in lieu thereof, "study".

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Purpose of the Measure

The purpose of S. 1552, as ordered reported, is to designate the White Clay Creek in Delaware and Pennsylvania for study for potential addition to the Wild and Scenic Rivers System.

Background and Need

White Clay Creek originates in Chester County, Pennsylvania, and flows in a general southerly direction crossing into Delaware's New Castle County and continuing to the city of Newark, Delaware. From there the creek continues eastward, before merging with the Christina River. In its upper reaches, the creek flows through a narrow wooded floodplain. Toward its confluence with the Christina, the creek flows through a wide floodplain and marshy lowlands.

Although surrounded by large urban populations, the White Clay Creek corridor has remained relatively undisturbed. In 1984, the National Park Service prepared a study of conservation alternatives for part of the creek's watershed. That study found that the creek possessed a number of unique natural and cultural features of multi-state and national significance. Three segments of the creek were included in the Park Service's 1982 Nationwide Rivers Inventory of potential Wild and Scenic Rivers.

White Clay Creek is heavily used for recreational purposes. The creek is one of the finest trout streams in Delaware. In addition, because of the creek's proximity to large urban areas, the corridor is popular for canoeing and hiking. The creek also provides important habitat for a wide variety of plants and animals, including the rare Purple Fringeless Orchid and Bog Turtle.

Legislative History

S. 1552 was introduced by Senators Biden, Wofford, Roth and Specter on July 24, 1991. The Subcommittee on Public Lands, National Parks and Forests held a hearing on this measure on November 7, 1991.

At the business meeting on November 20, 1991, the Committee on Energy and Natural Resources ordered S. 1552, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Committee on Energy and Natural Resources, in open business session on November 20, 1991, by unanimous vote of a quorum present, recommends that the Senate pass S. 1552, if amended as described herein.

The rollcall vote on reporting the measure was 20 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman*	
Mr. Wirth	
Mr. Conrad*	
Mr. Akaka*	
Mr. Fowler*	
Mr. Shelby*	
Mr. Wellstone	
Mr. Wallop	
Mr. Hatfield*	
Mr. Domenici	
Mr. Murkowski	
Mr. Nickles	
Mr. Burns	
Mr. Craig	
Mr. Seymour	
Mr. Garn	

* Indicates voted by proxy

Committee Amendments

During the consideration of S. 1552, the Committee adopted five clarifying and conforming amendments.

Section-by-Section Analysis

Section 1 entitles the bill the "White Clay Creek Study Act."

Section 2 contains the Congressional findings.

Section 3 amends subsection 5(a) of the Wild and Scenic Rivers Act to designate White Clay Creek, from its headwaters in Pennsylvania to its confluence with the Christina River in Delaware, as a Wild and Scenic Study River, including the East, West, and Middle Branches, Middle Run, Pike Creek, Mill Creek, and other main branches and tributaries as determined by the Secretary of the Interior (the "Secretary").

Section 4 amends subsection 5(b) of the Wild and Scenic Rivers Act to direct the Secretary to complete the study and submit the report not later than 3 years after the date of enactment of this paragraph.

Subsection (b) directs the Secretary to prepare a map of the White Clay Creek Watershed in Delaware and Pennsylvania, and provide recommendations for the protection and management of White Clay Creek, including the role State and local governments and affected landowners should play in the management of the creek if it is designated as a component of the Wild and Scenic Rivers System.

Subsection (c) directs the Secretary to conduct the study, in cooperation and consultation with appropriate State and local governments, and affected landowners.

Cost and Budgetary Considerations

The Congressional Budget Office estimate of the costs of this measure had been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1552. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1552, as ordered reported.

Executive Communications

On October 29, 1991, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior, the Federal Energy Regulatory Commission and the Office of Management and Budget setting forth Executive agency recommendations on S. 1552. These reports had not been received at the time the report on S. 1552 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Department of the Interior at the Subcommittee hearing follows:

Statement of Jerry Rogers, Associate Director, National Park Service, Department of the Interior

Mr. Chairman, I appreciate the opportunity to provide your Subcommittee with the views of the Department of the Interior on S. 1552.

We recommend the enactment of S. 1552.

This bill would amend section 5(a) of the Wild and Scenic Rivers Act to designate White Clay Creek, from the headwaters in Pennsylvania to its confluence with the Christina River in Delaware, for study as a potential component of the National Wild and Scenic Rivers System. The report for the study would be required in 3 years. The bill would further require development of a management plan for White Clay Creek that provides recommendations for protection and management, including the role that State and local governments and landowners should play if it is designated as a component of the national system. The bill requires the Secretary to prepare the study and management plan in cooperation and consultation with State and local governments and affected landowners.

The Nationwide Rivers Inventory issued by the National Park Service in 1982 identified segments of White Clay Creek in Delaware and Pennsylvania as being appropriate for further study. Twenty-three miles were identified in Pennsylvania and Delaware. The river values noted in the inventory were botanic resources and recreation potential. The river flows through a diversity of habitats that include a rare species of orchid, and it is in close proximity to Wilmington, Newark, and Philadelphia. We note that S. 1552 would include several tributaries for study that were not identified in the inventory. We have no objection to the extra river segments.

In addition to the analysis that led to the identification of segments of White Clay Creek on the Nationwide Inventory, the National Park Service has conducted other resource studies in the area. In 1984 our Mid-Atlantic Regional Office prepared an assessment of conservation alternatives for a 1,972-acre tract, owned by the DuPont Company, that is bisected by White Clay Creek. More recently, the Regional Office has assisted the White Clay Creek Watershed Association, a group of interested citizens and local governmental representatives, in planning and conducting an issues workshop early in 1991. Based on these activities, we believe the river segments identified in the 1982 inventory should be subjected to the formal section 4 study process set forth in the Wild and Scenic Rivers Act.

In this connection, Mr. Chairman, I would note that section 4 of the Act already requires that a river identify the extent to which administration of a river segment should be undertaken by State and local agencies. Section 4 also specifically requires us to obtain the comments and recommendation of the Governor of each affected State on a river study. Furthermore, section 5(c) of the Act specifically requires that studies be done in close cooperation with the affected State and local agencies; and section 11(b) of the Act directs the Secretary to assist States, political subdivisions, landowners, and private organizations or individuals to plan, protect, and manage river resources.

Our normal study procedure would include preparation of a river conservation plan. Accordingly, and in light of the authorities and requirements that are now included in existing law, we suggest the Subcommittee may wish to delete as unnecessary the requirement on page 3, beginning in line 16, through page 4, line 4, that the Secretary prepare a management plan for the river in cooperation with State and local governments and affected landowners.

We estimate that the cost of completing the study is approximately $200,000. If authorized, funding for the study would be subject to the Administration's budgetary priority-setting process.

Enactment of S. 1552 would have no "pay-as-you-go" implications under the Budget Enforcement Act, since the bill neither provides for direct spending nor increases revenues.

This concludes my prepared statement, Mr. Chairman. I would be happy to respond to any questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1552, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

WILD AND SCENIC RIVERS ACT

AN ACT To provide a National Wild and Scenic Rivers System, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Wild and Scenic Rivers Act".

* * * * * * *

SEC. 5. (a) The following rivers are hereby designated for potential addition to the national wild and scenic rivers system:

* * * * * * *

(112) WHITE CLAY CREEK, DELAWARE AND PENNSYLVANIA.—The headwaters of the river in Pennsylvania to its confluence with the Christina River in Delaware, including the East, West, and Middle Branches, Middle Run, Pike Creek, Mill Creek, and other main branches and tributaries as determined by the Secretary of the Interior.

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(b)(1) * * *

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(12)(A) The study of the White Clay Creek in Delaware and Pennsylvania, including its branches and tributaries, shall be completed and the report submitted not later than 3 years after the date of enactment of this paragraph.

(B) The study shall include a map of the White Clay Creek watershed in Delaware and Pennsylvania, and shall provide recommendations for the protection and management of White Clay Creek, including the role of State and local governments and affected landowners, if White Clay Creek is designated as a component of the Wild and Scenic Rivers System.

(C) The Secretary shall prepare the study in cooperation and consultation with appropriate State and local governments, and affected landowners.

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